

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

UNITED STATES OF AMERICA)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:18-cr-138 JD
)	
S. ERIC MARHSALL,)	
)	
Defendant)	
_____)	

**DEFENDANT'S RESPONSE TO
GOVERNMENT'S SECOND STATUS REPORT
AND MOTION TO SET SENTENCING HEARING ETC.**

Comes now the defendant, S. Eric Marshall, by and through his counsel, Donald J. Schmid (CJA), to submit the defendant's response to the government's status report and to move this Court for an order re-setting the sentencing hearing date and ordering a new draft of the PSR in this case.

Status

The government obtained additional records in the case on August 27, 2019 and also September 3, 2019. (See DE 62, pp. 2-3.) Since then, the government has reviewed the relevant records contained within these additional documents through its filter team and also its prosecution team. (DE 68.) The defendant has also been allowed to review a first set of these records – that is, certain records that the government has allowed him to see. There apparently remains seven boxes to be

reviewed by both the government's prosecution team and also by the defendant, Mr. Marshall. (DE 68, p. 2, ¶ 4.)

Motion

Rule 32(b)(1) of the Federal Rules of Criminal Procedure requires the court to “impose sentence without unnecessary delay.” Rule 32(b)(1), Fed.R.Crim.P. The government has had adequate time to review the records obtained in August/early September 2019. The defendant seeks to have this Court put back on calendar and to schedule the sentencing hearing in this case for a date convenient to the Court's calendar that is approximately 70 – 120 days from today's date. This will give the government and the defense sufficient time to review the remaining documents and for a new PSR to be prepared and submitted to the Court.

An order putting the sentencing hearing back on calendar is consistent with Rule 32(b)(1) and also will avoid the further deterioration of the defendant's health in the St. Joseph County Jail. The defendant has a serious blood clot, skin issues and other health issues that the Jail staff are struggling to address. The defendant's health issues could be better address in a U.S. Bureau of Prisons facility.

The defendant suggests that a new draft of the presentence report be prepared, given all that has happened in the case since August 2019. For example, the government has suggested in its most recent status report that it will take a different position regarding loss amount and perhaps regarding other sentencing issues. The existing draft report is thus dated and will not facilitate an efficient sentencing hearing. (Indeed, the existing report contained asserted loss

amounts and theories that had been abandoned by the government by early September 2019.) Thus, the defendant seeks an order from the Court requiring the government to submit a new “version of the offense” by a date in January 2020 and the defendant to respond to that new version of the offense within 10 days of that submission, with a new version of the PSR to be submitted to the Court and to the parties within 10 days of the defendant’s response.

Dated: December 1, 2019

Respectfully submitted,

/s/ Donald J. Schmid

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